

To: Gilley, Anne[Gilley.anne@epa.gov]
Cc: Jennings, Kim[Jennings.Kim@epa.gov]
From: Jacob, Sicy
Sent: Wed 4/2/2014 8:22:56 PM
Subject: RE: 1979 MSHA and OSHA Interagency Agreement

Anne: Unfortunately, our hands are tied regarding what chemicals are subject to Sections 311 and 312 since the statute clearly says that if an MSDS is required for a hazardous chemical under OSHA and its implementing regulations. So if the chemicals/activities present at facilities are regulated under MSHA, the chemicals won't be subject to EPCRA sections 311 and 312. Section 312 is an annual requirement anyway, so immediate notification is not really there. Of course, under Section 311, if any new chemical become present at a facility, then they have to provide an MSDS or the list of chemicals in 90 days.

However, EPCRA section 302(b)(2) provides the Governor or the SERC authority to designate additional facilities to be subject to the emergency planning requirements after public notice and comment. Then these facilities would be notifying the SERC and the LEPC that they are subject to the emergency planning requirements. For any new chemical become present on the site, the emergency planning notification requirement (section 302(c)) says that the facility must notify the SERC and LEPC in 60 days. The LEPC can use the authority provided in Section 303(d)(3) to request any information (the chemical names, amount, location etc) for developing and implementing the emergency plan.

So, we should advise the SERC to use their authority in section 302(b)(2) and the LEPC to use its authority under 303(d)(3).

Hope this helps.

Sicy Jacob

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From: Gilley, Anne

Sent: Wednesday, April 02, 2014 3:54 PM

To: Jacob, Sicy

Cc: Jennings, Kim

Subject: 1979 MSHA and OSHA Interagency Agreement

Sicy,

Back in February, we exchanged the attached string of emails concerning MSHA-regulated facilities versus OSHA-regulated facilities in relation to EPCRA 311/312 reporting requirements. At the time, I believed the state's questions dealt with a particular facility. I now understand that instead the state has an general concern about what they call a data gap created for the planning and response community by the 1979 Interagency Agreement between MSHA and OSHA. Submission of chemical information (MSDS, Tier IIs) to SERCs, LEPCs, and fire departments is only required under EPCRA if the facility is subject to OSHA's HCS; therefore, facilities subject to MSHA's jurisdiction do not have to submit chemical inventory info to emergency responders. However, MSHA-regulated facilities may have substantial quantities of hazardous chemicals onsite and obviously can experience a chemical release just the OSHA-regulated universe. My contact at PENNSAFE knows of several facilities in the Commonwealth of PA that recently brought onsite MCHM from out of state and they are located close to waterways. In her opinion, this lack of information prevents the local community from properly preparing for and responding to releases. She's also worried that if a high profile release (like the WV MCHM release) occurs and the SERC doesn't have a Tier II on the offending facility, it will come back to haunt them, even if legally the facility isn't required to submit Tier IIs. Is there a process in place where a response agency like a SERC or LEPC can get the chemical information about an MSHA-regulated facility from MSHA?

Thanks.

Anne Gilley, EPCRA Coordinator

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gilley.anne@epa.gov

From: Gilley, Anne

Sent: Tuesday, February 11, 2014 4:50 PM

To: Jacob, Sicy; Jennings, Kim

Subject: RE: Time sensitive question re: MCHM

I'm trying to get more info from the state. I will pass it along once I have it.

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From: Jacob, Sicy

Sent: Tuesday, February 11, 2014 3:43 PM

To: Gilley, Anne; Jennings, Kim

Subject: RE: Time sensitive question re: MCHM

Hi Anne: I don't know if we can answer this question or not. We have to know if the coal washing facility operations are under the jurisdiction of MSHA. If it is, then the facility is not subject to Sections 311/312 since its not under OSHA HCS.

Do you know the details of the coal washing facility? Is it located at the mining site? If I have to consult with our OSHA contact, I have to provide details. Thanks.

From: Gilley, Anne
Sent: Tuesday, February 11, 2014 12:37 PM
To: Jacob, Sicy; Jennings, Kim
Subject: Time sensitive question re: MCHM
Importance: High

Sicy and Kim,

Please see email below. The PA SERC has a question regarding MCHM. Due to the current sensitivity surrounding this chemical, I am uncomfortable responding back to the SERC before discussing the matter with HQ. Can one or both of you give me a call to discuss? Today I am working from home Ex. 6 - Personal Privacy Tomorrow I'll be back in the office at 215-814-3293. The SERC states this is time sensitive.

Thanks.

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From: Freeman, Carol [<mailto:cafreeman@epa.gov>]

Sent: Friday, February 07, 2014 3:56 PM

To: Gilley, Anne

Subject: Time for the tough questions...

According to the EPA website Q&A –

Are mining facilities required to notify under Sections 311 and 312?

Mining facilities regulated by the Mining Safety and Health Administration (MSHA) are not subject to OSHA's Hazardous Communication Standards (HCS) and, therefore, are not subject to the Section 311 and 312 requirements. However, it should be noted that because MSHA covers only actual mining activities, all other operations, such as refining, are covered under OSHA's HCS and are thus subject to Sections 311 and 312.

Now for my question –

If crude MCHM is used in a coal washing facility that is owned by a mining company in a closed system froth flotation process that separates valuable minerals, would that not be reportable on a Tier II if onsite at 10,000 pounds? Coal washing is not coal mining...

This is rather time sensitive. Your guidance would be appreciated.

Carol B. Freeman | Administrative Officer

Department of Labor & Industry |

Bureau of Occupational & Industrial Safety | Pennsafe Program

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